IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

First Appeal No. 673/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : December 11, 2006

Heard Mr. D.A. Sonwane, learned counsel for the appellant.

This appeal has been filed against judgment and order dated 30.6.2006 passed by the Commissioner under Workmen's Compensation Act at Nagpur in WCA No. 63/1994. The appellant-applicant filed the application seeking compensation against respondent on the ground that he was working with the respondent and on 25.12.1993 at about 11.00 a.m. there was an accident by which he sustained injury to his right hand. According to the applicant, he sustained 100% loss of earning capacity. The respondent contested the application and denied that the applicant was in his

employment and consequently denied the accident. The applicant examined himself by filing affidavit on 28/9/2005. Thereafter he did not submit himself for cross-examination and accordingly the evidence was closed on 28/11/2005. Thereafter the respondent filed his affidavit and produced documents. The Commissioner, after considering the evidence led by the parties, the Commissioner held that the applicant had not proved his case and consequently dismissed the application.

Mr. Sonwane, learned counsel for the appellant did not dispute that the applicant did not subject himself cross-examination. However, he submitted that the Commissioner ought to have given opportunity to cross-examine the respondent. According to learned counsel, the Commissioner wrongly and without any justification refused adjournment to the appellant to cross-examine the respondent in the light of the affidavit evidence filed by the respondent.

Having considered the submissions made by learned counsel, I do not find any ground to admit this appeal. The appellant did not subject himself to cross-examine and did not lead any evidence to establish his case. Insofar as the argument of learned counsel for the appellant that the appellant was not given opportunity to cross-examine the respondent is concerned, the same does not have any effect on the merits of the case. Since the relationship between applicant and the respondent was denied it was for the applicant to prove that he was in the employment of the respondent and that the accident occurred in the course of and out of employment. Once the applicant did not submit himself for cross-examination, the only conclusion that can be drawn is that the applicant did not lead any evidence in support of his case. That being the position, I do not find any legal infirmity in the approach of the Commissioner while passing the impugned judgment and order. In any case, no substantial question of law is

involved in the appeal. Hence, the appeal is summarily rejected.

JUDGE

A.